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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,376	03/30/2001	George H. Butcher III	006878-111401	5338

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EXAMINER	
BORLINGHAUS, JASON M	

ART UNIT	PAPER NUMBER
3693	

NOTIFICATION DATE	DELIVERY MODE
09/02/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	09/823,376	BUTCHER, GEORGE H.	
	Examiner	Art Unit	
	JASON M. BORLINGHAUS	3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 June 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *15,17-22 and 25-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15, 17-22, 25-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/17/08 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15, 17 – 22 and 25 – 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 states "wherein the requirement that the bond issuer establish revenue rates expected to be sufficient to pay the repayment obligation by the expected payment date comprises establishing a revenue requirement based on a first coverage ratio ***that is lower than a second coverage ratio that is used for purposes of a board policy associated with the bond or a third coverage ratio that is used for purposes of a rate covenant associated with the bond***." (emphasis added). Claim language is rendered indefinite by reference to an object that is variable. See *MPEP § 2173.05(b)*.

Claim language fails to indicate what constitutes "a second coverage ratio that is used for purposes of a board policy associated with the bond or a third coverage ratio that is used for purposes of a rate covenant associated with the bond". As said coverage ratios could be any ratio, such claim limitation fails to define any limitations of the "first coverage ratio."

Furthermore, Claim 15 is unclear as to the "or". Does Claim 15 mean that the first coverage ratio is lower than (1) a second coverage ratio or (2) a third coverage ratio? Or does Claim 15 mean that the revenue requirement is based on (1) a first coverage ratio that is lower than a second coverage ratio or (2) a third coverage ratio? Examiner assumes that the first interpretation is the correct interpretation.

Dependent claims are rejected based upon their dependency upon prior rejected claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.

3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 15, 17 – 22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grigsby (PG Pub 2002/0016758) in view of Bachmann (US Patent 6,315,196) and Paulson (Paulson, Ed. *The Complete Idiot's Guide to Buying & Selling a Business. Alpha Books*. 1999. pp. 75 – 76).

Regarding Claim 15, Grigsby discloses a method implemented by a programmed computer system comprising:

- inputting into the computer system data regarding the expected payment date (repayment schedule) for a bond issued by a bond issuer, wherein the bond has a repayment obligation and an underlying revenue stream (property taxes or sales taxes). (see abstract; para. 3; para. 13; para. 61);
- inputting into the computer system data regarding a legal maturity date (maturity date) for the bond. (see para 8);
- inputting into the computer system data regarding a requirement that the bond issuer establish revenue rates (projected revenue) expected to be sufficient to pay the repayment obligation (bond) by the expected payment date. (see para. 61);
- inputting into the computer system data regarding the underlying revenue stream (revenue streams) associated with the bond. (see para. 61);
- determining within the computer system, based at least upon the input data regarding the expected payment date and the input data regarding

the underlying revenue stream, if the repayment obligation will be met by the expected payment date (such as when the obligation will not be met when the revenue stream produces "low or uncertain revenues."). (see para. 61); and

- meeting the repayment obligation by the expected payment date (repayment schedule) to the extent that the determining step determines that the repayment obligation will be met by the expected payment date (such as the individual dates on said repayment schedule). (see para. 13).

Grisby does not teach a method comprising establishing a revenue requirement based on a first coverage ratio; making the payment of the repayment obligation at a deferral date as late as the legal maturity date to the extent that the repayment obligation is not met by the expected payment date due to the failure of the revenue stream of the bond to cover the requirements of the repayment obligation; nor wherein the first coverage ratio is greater than 1 and up to 1.20.

Paulson discloses a method comprising a revenue requirement (EBIT) based on a first coverage ratio; and wherein the first coverage ratio is greater than 1. (see p. 75 – 76).

Bachman discloses a method comprising making the payment of the repayment obligation (debt of a credit account) at a deferral date as late as the legal maturity date (maximum benefit duration date) to the extent that the repayment obligation (debt) is not met (unpaid) by the expected payment date (minimum payment due date) due to the failure of the revenue stream such as to cover the requirements of the repayment

obligation (unable to make timely payments, such as due to unemployment). (see abstract);

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Grigsby and Paulson by incorporating coverage ratios greater than one, as disclosed by Paulson, as a coverage ratio is one "then it means that this company is barely making its loan interest payments." (see p. 76).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Grigsby and Paulson by incorporating a method of deferment for repayment of the debt obligation, as disclosed by Bachman, if parties were unable to meet the repayment obligations under the bond due to insufficient revenue streams, providing parties an further opportunity to repay.

Regarding Claims 17 - 18, Grisby discloses a method wherein the revenue stream flows from a project selected from the group consisting of an airport project (airports) and sewer project (water works). (see para. 61).

Grisby does not teach a method wherein the failure of the revenue stream to cover the requirements of the repayment obligation results from a force majure event.

Bachman discloses a method wherein the failure of the revenue stream to cover the requirements of the repayment obligation results from a force majure event (hospitalization, unemployment, disability). (see abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Grigsby, Paulson and Bachman by incorporating

a force majure event, as disclosed by Bachman, as force majure events may prevent a debtor from meeting repayment obligations.

Regarding Claims 19 – 20, Grisby discloses a method wherein the requirement that the bond issuer establish revenue rates expected to be sufficient to pay the repayment obligation by the expected payment date further comprises the requirement that the bond issuer establish revenue dates expected to be sufficient to pay the repayment obligation date and legally payable debt service. (see para. 61).

Grisby does not teach a method wherein the deferral of the payment of the repayment obligation occurs upon the occurrence of a determinable event.

Bachman discloses a method wherein the deferral of the payment of the repayment obligation occurs upon the occurrence of a determinable (verifiable) event. (see abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Grigsby, Paulson and Bachman by incorporating a determinable event, as disclosed by Bachman, thereby making the event which necessitates deferral of repayment obligations verifiable to all parties.

Regarding Claims 21 – 22, Grisby discloses a method wherein the requirement that the bond issuer establish revenue rates expected to be sufficient to pay the repayment obligation by the expected payment date. (see para. 61).

Grisby does not teach a method wherein the determinable event is the existence of a shortfall between (i) the sum of the repayment obligation and legally payable debt service and (ii) revenues raised by the revenue rates established by the bond issuer;

and the revenue rates are a continuing requirement even if the repayment obligation is deferred.

Bachman discloses a method wherein: the determinable event is the existence of a shortfall between (i) the sum of the repayment obligation and legally payable debt service (debt on a credit account) and (ii) revenues raised by the revenue rates established by the bond issuer (zero revenue due to unemployment). (see abstract).

While neither Grisby nor Bachman explicitly disclose a method wherein the revenue rates are a continuing requirement even if the repayment obligation is deferred, such is implied. Bachman discloses a deferral of repayment obligations tied to a debt account. Deferral of repayment obligations means a postponement of repayment obligations not the extinguishing of the repayment obligations. If repayment obligations are deferred then the repayment obligations continue even though payment is deferred.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Grigsby, Paulson and Bachman by incorporating a quantifiable metric, as disclosed by Bachman, thereby defining the metric allowing for deferral of repayment obligations.

Regarding Claim 25, Grisby discloses a method wherein the bond is issued as part of a pool of bonds. (see para. 54).

Claims 26 - 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grigsby, Bachman and Paulson, as applied to Claim 15 above, and further in view of Official Notice.

Regarding Claims 26 – 33, Grisby does not teach a method wherein the bond is associated with a state revolving fund program; additional interest on a principal portion or interest portion of the repayment obligation that is not met continues to accrue until the repayment obligation is met; an increase in the interest rate following an inability to pay a debt by the expected payment date; and a revenue stream is a net revenue stream.

Examiner takes ***Official Notice*** that a state revolving fund program; accruing interest on an unpaid principal portion or unpaid interest of the repayment obligation that is not met continues to accrue until the repayment obligation is met, such as compound interest; increasing the interest rate following an inability to pay a debt by the expected payment date; and usage of a net revenue stream for debt calculations are old and well known in the art of financial management and debt servicing.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Grigsby, Bachman and Paulson by incorporating methodologies, as are old and well known in the art, as such methodologies are standard and conventional in the art of financial management and debt servicing.

Response to Arguments

Applicant's arguments filed 6/17/08 have been fully considered but they are not persuasive.

Grisby Reference

Applicant argues that Grisby does not disclose "a requirement that the bond issuer establish certain revenue rates expected to be sufficient the repayment obligation by the expected date." Examiner disagrees.

Grisby states:

> At step 2206, staff associated with the system and/or method in accordance with embodiments of the present invention may reject 2208 an application 2204 for exemplary reasons such as but not limited to an overly risky venture or poor credit history. An example of a risky venture may be a skating rink, as opposed to, for example, a safer venture like a city hall. The system and/or method in accordance with embodiments of the present invention may not accept applications 2204 associated with riskier municipal bonds. Another exemplary risky bond may be one associated with borrowing money to build a new housing subdivision in the middle of a desert. ***The system and/or method in accordance with embodiments of the present invention may reject applications 2204 from an issuer, such as a municipality, rated A or better, if the application 2204 involves a project having low or uncertain revenues, such as a project for building a swimming pool where the only revenues would come from people going to the pool to pay to swim***. Exemplary applications that may be approved 2210 may include applications associated with airports and/or general obligations based on property taxes and water works where revenue streams may be more certain or consistent. Such exemplary applications may have established credit levels. ***Staff 2206 may reject 2208 if the investment, for example, is speculative or non-investment grade.*** (emphasis added – para. 61).

Grisby discloses that a bond-funded project generating low or uncertain revenues are rejected by the system implies that for a bond-funded project to be approved that the bond-funded project must generate sufficient revenue to be approved.

Furthermore, Examiner asserts that disclosure is not limited to the specific teachings of prior art reference(s) but also the reasonable inferences that one skilled in the art would logically draw therefrom. *In re Shepard, 138 USPQ 148 (CCPA 1963).* "Those skilled in the [relevant] art must be presumed to know something about [relevant art] apart from what the references disclose*." In re Jacoby, 135 USPQ 317 (CCPA*

1962). This because "[e]very patent application and reference relies to some extent on knowledge of persons skilled in art to complement that disclosed [.]" *In re Bode, Nolan, Baker, Mathias, and Pfaender, 193 USPQ 12, 16 (CCPA 1977)*. Therefore, Examiner asserts that anything not disclosed by the specific teachings of the prior art reference(s), a point that the Examiner does not concede, is a reasonable inference that one skilled in the art would logically draw from the prior art.

Specifically, Examiner asserts that if a bond issuer inquired about the revenue generated by a bond-funded project and rejected bond-funded projects that generated "low or uncertain revenue" it would be a reasonable inference that one skill in the art would logically draw that the bond issuer would require revenue generated by a bond-funded project be sufficient to meet repayment obligations.

Analogous Art

Applicant argues that Grisby and Bachmann are nonanalogous art due to “the disparate fields of these two references [and] there would have been no motivation to combine two references as suggested by the Examiner.”

Examiner asserts that the prior art references are valid under the analogous arts test. The Courts have stated that to be utilized “as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.” *In re Oetiker, 977 F.2d 1443, 1447 (Fed. Cir. 1992)*. As such “it is necessary to consider “the reality of the circumstances” -- in other words, common

sense -- in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor." *In re Wood, 599 F.2d 1032, 1036 (CCPA 1979).* Examiner asserts that based upon common sense, the field of the references and/or the problem the inventor was concerned about, that the cited prior art references would have been utilized by a skilled artisan in the art, as all prior art references relate to issuing, managing and payment of debt instruments (bonds and credit accounts).

In Combination

Applicant argues that neither Grisby nor Bachman disclose deferral of the repayment obligation to the extent that it is not met by the expected payment date due to the failure of the revenue stream of the bond to cover the requirements of the repayment obligation.

In response to applicant's piecemeal analysis of the references, "one cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references." *In re Keller, Terry, and Davies, 208 USPQ 871, 882 (CCPA 1981).* In the instant case, applicant refutes each prior art reference individually, rather than viewing them in combination, in light of the totality of their combined teachings.

Grisby discloses a bond-funded project that generates revenue, said revenue being used to satisfy the repayment obligation (see para. 61).

Bachman discloses a person with a repayment obligation (credit account). The person may have a failure of a revenue stream (no income due to unemployment), thereby preventing the person from satisfying his repayment obligations. Based upon the failure of the revenue stream (unemployment) deferring the repayment obligation. (see abstract).

In combination, Grisby and Bachman disclose a deferral of the repayment obligation to the extent that it is not met by the expected payment date due to the failure of the revenue stream of the bond to cover the requirements of the repayment obligation.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Borlinghaus whose telephone number is (571) 272-6924. The examiner can normally be reached on 8:30am-5:00pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason M Borlinghaus/

Examiner, Art Unit 3693

August 27, 2008